

# ONTARIO WORKING GROUP ON CRIMINAL LAW + HIV EXPOSURE



October 2, 2015

Honourable Eric Hoskins  
Ministry of Health and Long-Term Care  
10<sup>th</sup> Floor, Hepburn Block  
80 Grosvenor Street  
Toronto, Ontario M7A 2C4

Dear Minister Hoskins,

**Re: Criminal law and HIV**

Please accept this letter on behalf of the Ontario Working Group on Criminal Law and HIV Exposure (CLHE).

As you know, CLHE has been working for the last seven years to confront the growing crisis of criminal prosecutions of people living with HIV in Ontario. For over five years, CLHE has been in discussions with the Ministry of the Attorney General (MAG) to ensure that the manner in which such prosecutions occur take into account a complete and accurate understanding of current medical and scientific research about HIV, and are compatible with broader scientific, medical, public health, and community efforts to prevent the spread of HIV and to provide care, treatment and support to people living with HIV.<sup>1</sup>

In December 2010, CLHE was very pleased that then Attorney General Chris Bentley agreed to develop, with the input of CLHE, guidance for Crown prosecutors in relation to HIV non-disclosure, and to share a draft with CLHE. In summer 2011, CLHE provided MAG with a *Report and Recommendations*<sup>2</sup> based on community and expert consultations conducted by CLHE around the province with people living with HIV, communities affected by HIV, legal, public health, criminal justice and scientific experts, health care providers, and advocates for women's rights in the context of sexual violence and the criminal justice system.

In May 2014, over 75 leading scientific experts signed the *Canadian Consensus Statement on HIV and its Transmission in the Context of Criminal Law* (Consensus Statement), which details the science surrounding HIV transmission and raises serious concerns with the manner in which criminal prosecutions are taking place.<sup>3</sup> The statement

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<sup>1</sup> Please see <http://clhe.ca/advocacy-timeline> for the history of the written record of discussions.

<sup>2</sup> Please see <http://clhe.ca/wp-content/uploads/CHLE-guidelines-report.pdf>.

<sup>3</sup> M Loutfy, M Tyndall, J-G Baril, JSG Montaner, R Kaul, C Hankins. Canadian consensus statement on HIV and its transmission in the context of criminal law. *Can J Infect Dis Med Microbiol* 2014;25(3):135-140, at <http://tinyurl.com/ovo42c8>.

was sent to MAG by Drs. Mona Loutfy and Mark Tyndall, co-chairs of the scientific expert team who developed the Consensus Statement.

Although the above material was provided to MAG, and although discussions have been taking place for over five years, appropriate guidance has not been developed and the scope of the problem continues to escalate. People living with HIV continue to be charged and prosecuted for having sex with an undetectable viral load despite medical evidence that the risk of transmission in such circumstances is close to zero. Similarly, people living with HIV continue to be prosecuted for having sex even with an unbroken condom, in which case the risk of transmission is indeed zero.

There is serious concern that prosecutions will have a disproportionate impact on the most marginalized and vulnerable of persons living with HIV, including those who may not have access to medications or sustained health care, such as racialized newcomers and First Nations persons. Similarly, there is great concern that prosecutions will have a disproportionate impact on vulnerable women living with HIV who are in abusive relationships or who cannot safely impose condom use or disclose their HIV status to sexual partners.

In terms of public health, there is an increasing body of evidence that an overly broad use of the criminal law undermines HIV prevention efforts, and compromises the ability of people living with HIV to access the care, treatment and support they need to stay healthy. The current use of the law prevents people living with HIV from talking openly with health care providers due to the fear that their HIV and other test results and discussions with medical professionals will be used as evidence against them in a criminal proceeding. We also remain deeply concerned that an overly broad use of the criminal law creates a disincentive for individuals to seek HIV testing.

You demonstrated a clear understanding of the issues when you met with CLHE members in December 2011. We respectfully request another meeting with CLHE members as well as Dr. Loutfy, to discuss the impacts of prosecutions on public health and people living with HIV.

We very much look forward to hearing from you, and thank you for your attention to this matter.

Sincerely,



**Ryan Peck**

Barrister & Solicitor, Executive Director, HIV & AIDS Legal Clinic Ontario  
Chair, Ontario Working Group on Criminal Law and HIV Exposure

cc Dr. Mona Loutfy, MD FRCPC MPH, Infectious Diseases Specialist,  
Women's College Hospital, Maple Leaf Medical Clinic, University of Toronto, Co-chair  
of Canadian Experts on HIV and Transmission Team

Dr. Mark Tyndall, MD FRCPC ScD, Executive Medical Director at BC Centre for  
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